

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
APPEAL FROM ORDER NO.1083 OF 1998**

Smt.Usha Pandurang Sabannvar

...Appellant

Vs.

Smt.Sushila Vasant Jade & Ors.

...Respondents

Mr.S.D.Dharmadhikari for the Appellant

Mr.Shantaram Depale i/b Mr.R.V.More for Respondent Nos.1 to

3.

**CORAM: A.S.OKA, J.**

**DATED: JANUARY 18, 2005.**

**P.C.:**

1. Heard Counsel appearing for the parties. The Appeal is by the original Plaintiff. The Appellant has taken exception to the Judgment and Order dated 28th August 1998 passed by the Trial Court below the Application at Exh.5. By the said order the Application for temporary injunction made by the Appellant in the suit has been rejected.

2. The Appellant filed a suit for partition and perpetual injunction. The Appellant claims 1/5th share in the suit properties. The Respondent No.1 is the mother of the Appellant. Respondent Nos.2 and 3 are the sisters of the Appellant and the Respondent No.4 is the brother of the Appellant. The case of the Appellant is that the suit properties were purchased by the father of the Appellant. The father of the Appellant expired on 4th August 1979. The claim of the Appellant is to 1/5th share in the suit

properties.

3. In the said suit Application for temporary injunction was made by the Appellant. The case of the Appellant is that she is in possession of one room bearing Room No.1 on the eastern side of the suit property described in paragraph No.1-A of the plaint. The prayer in the said Application is for temporary injunction restraining the Respondents from dis-possessing the Appellant of the said room. On 13th July 1998, the learned Trial Judge issued show cause on the said Applicant and directed the parties to maintain status quo by way of ad-interim order.

4. The said application was opposed by the Respondents by filing written statement which was adopted as reply to the application for temporary injunction. The defence of the Respondents in short is that the suit properties described in paragraph Nos.1-A and 1-B of the plaint are self acquired properties of the Respondent No.1 and the property described in paragraph No.1-C of the plaint is owned by the Respondent No.4. In so far as house property described in paragraph No.1-A of the plaint is concerned, a case was made out that the Respondent No.1 has constructed the suit house from her own income. The learned Trial Judge rejected the application by holding that the Appellant has not made out a prima facie case for grant of temporary injunction.

5. On 10th December 1998 notice before admission was issued in this Appeal from Order. There was a Civil Application for interim relief being C.A.St.No.10420 of 1998 filed in this Appeal. On the same day rule was issued and parties were directed to maintain status quo as of that day. On 10th March 1999 the said ad-interim order of status quo was confirmed. Thus, the order of status quo is operating in this Appeal from Order from 10th December 1998. As pointed out earlier by an ad-interim order dated 13th July 1998 passed on the application at Exh.5 the learned Trial Judge directed the parties to maintain status quo.

6. The main suit is still pending. As the order of status quo is operating all through out, it will be unjust to vacate the same in the year 2005. Considering the facts and circumstances of the case, Appeal is disposed of by passing the following order :

- i) Ad-interim order passed in Civil Application St.No.10420 of 1998 on 10th December 1998 will continue to operate till the final disposal of the suit.
- ii) The learned Trial Judge will decide the suit finally without being influenced either by prima facie findings recorded in the impugned order or by grant of interim relief and continuation thereof by this court.
- iii) Parties to act upon an authenticated copy of this order.

**Judge.**